HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION(S). 4856 of 2007

PETITIONER Francis Xavier Beck S/o late Habil Beck, Aged about 38 years, R/o. Indira Nagar Village Fundurdihari, Ambikapur, Surguja, District Surguja (CG)

Vs.

RESPONDENTS

1. State of Chhattisgarh, Through: Secretary, Home, D.K.S. Bhawan, Raipur, District Raipur (CG)
2. Director General of Police, Chhattisgarh, Raipur, District Raipur (CG)
3. Inspector General of Police, Chhattisgarh, Raipur, District Raipur (CG)
4. Superintendent of Police, Surguja, District Surguja (CG)
5. Ashwini Shrivastava, Sub-Inspector (M), 10th Wahini, Chhattisgarh Arms Force Surguja, District Surguja (CG)

PRESENT: Shri Manoj Paranjpe, Advocate for the petitioner.
Shri G.K. Beriwal, Dy. Advocate General, for the State/ respondents No. 1 to 4.
Shri Bhaskar Payasi, Advocate for the respondent No. 5.

O R D E R
(11-10-2007)

Dhirendra Mishra, J

By this petition under Article 226 of the Constitution of India, the petitioner has impugned the order dated 1st August, 2007 of Annexure P-6 whereby he has been transferred from the office of Superintendent of Police, Sarguja to 10th Battalion, Chhattisgarh Armed Force Sarguja and in his place, respondent No. 5 has been transferred from 10th Battalion, Chhattisgarh Armed Force (for short "CAF"), Sarguja to the office of Superintendent of Police, Sarguja.

2. The grounds taken by the petitioner in the petition are that the order has been passed on account of political considerations without there being any administrative exigency just to accommodate the respondent No. 5 in his place.

3. The respondent No. 5 in his return has submitted that the petitioner is posted at his present place of posting since 1995. This fact has been suppressed by the petitioner. He was initially appointed

as Assistant Sub Inspector (Ministerial) in the year 1995 and was posted in the office of Superintendent of Police, Sarguja. He was temporarily promoted to the post of Sub Inspector (Ministerial) and was posted at Jashpur vide order dated 26-12-2005 however, the petitioner did not join and continued to work as Assistant Sub Inspector (Ministerial) in the present place of posting and thereafter he was promoted to the post of Sub Inspector (Ministerial) in district Sarguja itself vide order dated 15-2-2007 of Annexure R-5/2. The petitioner has already been relieved from the office of Superintendent of Police on 17-8-2007 vide Annexure R-5/3. The petitioner has suppressed all these facts in his writ petition and therefore, the petition deserves to be dismissed on the ground of suppression of material facts. The respondent No. 5 had been representing with the authorities for his posting at Sarguja as his wife is also a Government servant and posted as Assistant Sub Inspector in the office of Superintendent of Police, Sarguja. The Commandant, 10th Battalion, CAF, Sarguja vide his memo of Annexure R-5/10 dated 10-11-2006 addressed to Assistant Inspector General of Police recommended his transfer to the office of Superintendent of Police, Sarguja whereupon the Inspector General of Police vide his memo dated 6-2-2007 of Annexure R-5/11 forwarded the recommendation of the Commandant for necessary action to Assistant Inspector General of Police (Administration-1), Police Head Quarter, Raipur.

4. Learned counsel for the petitioner submits that from perusal of the document of Annexure P-5, the letter written by Parliamentary Secretary, it is evident that order of Annexure P-6 has been passed due to political consideration just to accommodate the respondent No. 5. Referring to the documents annexed with the application dated 5-10-2007, learned counsel for the petitioner argued that wife of respondent No. 5 was transferred to 10th Battalion, CAF, Sarguja after promoting her, however she was not inclined to avail the promotion and therefore, the transfer of respondent No. 5 in the place of petitioner is, in fact, made with a view to post the husband and wife at one place and the same has been passed to accommodate the respondent No. 5. Reliance is placed in the matter of **B Varadha Rao -v- State of Karnataka and others**[1] and it is argued that where the

[1] AIR 1986 SC 1955

transfer is malafide and the same is made not for professed purpose such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons, then judicial interference is called for.

5. On the other hand, learned counsel for the respondent No. 5 submitted that the petitioner is working in the present place of posting since 1995. He has been transferred from the office of Superintendent of Police, Sarguja to 10th Battalion, CAF, Sarguja. Both the places of posting are situated in two different offices at Ambikapur city and the order has already been given effect to and the petitioner stands relieved and the transfer is an incident of service. The petitioner has deliberately suppressed these facts in his petition. The petitioner has no claim to remain in his present place of posting and the petition deserves to be dismissed.

6. Learned counsel for the State has also opposed the petition.

7. I have heard the learned counsel for the parties.

8. From perusal of the pleading of the respective parties, it is evident that the petitioner was posted in his present place of posting since 1995. He has been transferred from the office of Superintendent of Police, Sarguja to 10th Battalion, CAF, Sarguja and thus the petitioner has been transferred by the respondents from one office to another office within the city of Ambikapur. It also transpires that he was promoted and transferred to Jashpur in the year 2005 however he did not join at Jashpur after promotion and ultimately he was again promoted and posted in his present place of posting.

9. It is settled law that in public service, transfer is an incident of service and an implied condition of service and the appointing authority has a wide discretion in the matter and they are the best judge to decide how to utilize the services of their employees. In the matter of **B. Varadha Rao**[1] it has been held that the power of transfer must be exercised honestly, bona fide and reasonably in public interest and where the transfer is affected on extraneous considerations or for achieving an alien purpose or an oblique motive, it would amount to malafide and colourable exercise of power.

However, considering the facts of present case and considering that the petitioner is posted in the present place of posting since 1995 and even earlier when he was promoted and transferred to Jashpur, he continued to remain in the present place of posting and also considering that the order of transfer of respondent No. 5 has been passed on the basis of various representations submitted by him and his wife in the past and on the recommendation of the Commandant of 10th Battalion, CAF, Sarguja, it cannot be said that the transfer order of the petitioner is mala fide and the same has been effected with ulterior motive of accommodating the respondent No. 5.

10. In the result, there is no substance in the petition, the same deserves to be dismissed and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge